1259

SUPREME COURT OF THE UNITED STATES.

No. 134.

PIERRE CHOUTEAU, SEN'R, PLAINTIFF IN ERROR,

vs.

WILLIAM ECKHART.

IN ERROR TO THE SUPREME COURT OF MISSOURI.

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J. & G. S. GIDEON, printers.

STATE OF MISSOURI, *to wit:*

Be it remembered, that heretofore, to wit, on the second day of February, in the year of our Lord one thousand eight hundred and forty-one, there was filed in the office of the clerk of the supreme court of the State of Missouri, within and for the third judicial district of said State, a transcript of the record and proceedings of a certain suit before that time pending in the circuit court of St. Charles county, in said State, wherein Pierre Chouteau, senr., was plaintiff, and William Eckert was defendant, the said transcript was filed as aforesaid, in obedience to a writ of error, of which the following is a true copy, to wit:

STATE OF MISSOURI, *Third Judicial District, ss:*

The State of Missouri, to the honorable the circuit court of St. Charles county, greeting:

Forasmuch as in the record and process, as well as in the rendition of judgment on a certain plaint which was in our circuit court for our county of St. Charles, before our judge thereof, between Peter Chouteau, senr., plaintiff, and William Eckert, defendant, in a plea of trespass and ejectment, as it is said, manifest error hath happened, to the great damage of the said Peter Chouteau, senior, as by his complaint we are informed, we, being willing that the error, if any there be, should be duly amended, and full and speedy justice done to the parties aforesaid in this behalf, command you, that if judgment be thereupon given, then a transcript of the record of the judgment, with all things touching the same, you certify, and send (with this writ) to our supreme court, to be holden at the city of St. Louis, within and for the third judicial district, on the third Monday of May next, that our judges of our said court, inspecting the record of the judgment aforesaid, may cause to be done therein, for correcting the said error, what of right, and according to law, shall seem meet to be done.

Witness, John Ruland, clerk of our said court, and the seal of office hereunto affixed, at the city of St. Louis, this twelfth of January, in the year of our Lord one thousand eight [L. S.] hundred and forty-one, and of the independence of the United States of America the sixty-fifth.

JOHN RULAND, *Clk.*

Upon said writ of error is the following endorsement, to wit:

STATE OF MISSOURI, *county of St. Charles.*

In obedience to the within writ, I have certified, and herewith transmit to the supreme court, third judicial district, a transcript of the record of the judgment, with all things touching the same, in the case of Peter Chouteau, senr., *vs.* William Eckert.

Witness my hand, and seal of St. Charles circuit court, this 30th [L. S.] day of January, 1841.

LUDWELL E. POWELL, *Clk.*

The said transcript is in the words and figures following, to wit:

STATE OF MISSOURI, *county of St. Charles.*

Be it remembered, that heretofore, to wit, on the eighteenth day of February, in the year of our Lord eighteen hundred and thirty-nine, Pierre Chouteau, senr., by Bogy & Hunton, his attorneys, filed in the office of the clerk of the circuit court of St. Charles county, his declaration against William Eckert, in the words and figures following, to wit:

STATE OF MISSOURI, *St. Charles county, sct:*

St. Charles circuit court, spring term, 1839.

Pierre Chouteau, senr., by his attorneys, Bogy & Hunton, complains of William Eckert, of a plea of trespass and ejectment, for that whereas the said Chouteau, on the first day of January, in the year 1839, was entitled to the possession of a certain tract of land, lying in the county of St. Charles, in township 46 north of the base line, ranges 4 and 5 east, of the principal meridian, containing by survey thirteen hundred and ninety-six acres and thirty hundredths of an acre, and bounded as follows, to wit: beginning at a stone on the north bank of Missouri river, five chains and eighty-three links below a bridge over a creek comprised in the survey; thence north 75 degrees west, 116 chains and 66 links, to a stone; thence south 15 degrees west, 96 chains and 81 links, to a stone intersecting the easterly boundary line of survey No. 165, in the name of George R. Spencer, under Michael Rybolt; thence south 35½ degrees east, 37 chains and 65 links, to a stone, corner of survey No. 165; thence south 2½ degrees east, 23 chains and 45 links, with the boundary line of survey number 165, to a cotton wood on the left bank of Missouri river; thence with the meanders of the river down stream to the beginning.

And the said plaintiff being so entitled to the possession thereof, the said defendant, afterwards, to wit, on the second day of January, in the year 1839, entered into said premises, and withheld, and now unlawfully withholds, from the plaintiff the possession thereof; and other wrongs then and there did, to the damage of the plaintiff one thousand dollars; and therefore he brings his suit.

BOGY & HUNTON,
Att'ys for plaintiff.

Upon which the clerk of the circuit court of St. Charles county issued a summons in the words and figures following, to wit:

ST. CHARLES COUNTY, *ss:*

The State of Missouri, to the sheriff of St. Charles county, greeting:

We command you to summon William Eckert to appear in the circuit court of St. Charles county, at the court house in said coun-

ty, on the second Monday after the fourth Monday in March next, to answer the complaint of Pierre Chouteau, senior, plaintiff, of a plea of trespass and ejectment, damages one thousand dollars, in the annexed declaration set forth; and have you then there this writ.

Witness, Ludwell E. Powell, clerk of said circuit court, with the seal of said court hereto affixed, at office in St. Charles, this 18th day of February, eighteen hundred and thirty-nine.

[L. S.]

LUDWELL E. POWELL, *Clk.*

Endorsed on said writ is the return of the sheriff, in the words and figures following:

Executed the within declaration and writ, on the within named William Eckert, by reading the same to him in the county of St. Charles, on the 19th day of February, 1839.

DAVID McCAUSLAND, *Sheriff.*

And afterwards, in the circuit court of St. Charles county, on the ninth day of May, in the year of our Lord eighteen hundred and thirty-nine, the following proceedings were had in said cause, to wit:

PETER CHOUTEAU } vs. } WILLIAM ECKERT. } Ejectment.—Plea filed.

Said plea is in the following words and figures, to wit:

STATE OF MISSOURI, *St. Charles county.*

PETER CHOUTEAU, Plaintiff, } vs. } WILLIAM ECKERT, Def't. } Action of ejectment.

In St. Charles circuit court, spring term, 1839.

Now, at this day, comes said defendant, William Eckert, by his attorneys, and defends the force and injury aforesaid, and says that he is not guilty of unlawfully withholding from said plaintiff the premises in said declaration mentioned, in manner and form as said plaintiff hath above thereof complained against him, and of this he puts himself upon the country; wherefore, &c.

GAMBLE & CAMPBELL,
Attorneys for deft.

And afterwards, in said court, on the seventeenth day of May, eighteen hundred and thirty-nine, the following proceedings had in said cause, to wit:

PIERRE CHOUTEAU, SEN., } vs. } WILLIAM ECKERT. } Ejectment continued.

And afterwards, in the circuit court of St. Charles county, on the eleventh day of September, eighteen hundred and thirty-nine, the following proceedings were had in said cause, to wit:

PIERRE CHOUTEAU, SEN., vs. WILLIAM ECKERT. } Ejectment continued.

And afterwards, in said court, on the tenth day of December, eighteen hundred and thirty-nine, the following proceedings were had in said cause, to wit:

PIERRE CHOUTEAU, SEN., vs. WILLIAM ECKERT. } Ejectment continued.

Afterwards, in said circuit court, on the fourteenth day of May, in the year eighteen hundred and forty, the following proceedings were had in said cause, to wit:

PIERRE CHOUTEAU, SEN., vs. WILLIAM ECKERT, Deft. } Ejectment.

Now, at this day, appear said parties, by their respective attorneys, and thereupon came a jury, to wit:

William C. Lindsay,	Richard B. Brumfield,
William Douglass,	Taliaferro P. Grantham,
Zachary T. Woolfolk,	Valentine Knupp,
Solomon Jenkins,	Pines H. Shelton,
John Markell,	Marcus L. Julian,
Charles McLee Fariss,	Charles W. Littler,

Twelve good and lawful men, of the county of St. Charles, who, being duly empannelled, tried and sworn, the issue well and truly to try between the parties aforesaid, upon their oath do say, that the said William Eckert is not guilty of the said trespass and ejectment, above laid to his charge, in manner and form as said plaintiff hath above thereof complained against him; therefore, it is considered by the court, that the said plaintiff take nothing by his said writ, and that the said defendant, William Eckert, recover of the said Pierre Chouteau, sen., his costs and charges by him about his defence in this behalf expended, and that he have thereof execution.

And afterwards, on the day and year last aforesaid, the following proceedings were had in said cause, to wit:

PIERRE CHOUTEAU, sr. vs. WILLIAM ECKERT. }

Now at this day appears said plaintiff, and by his attorney tenders to the court his bill of exceptions to the proceedings of the court in this cause, which is signed by the court and made a part of the record. Said bill of exceptions is in the words and figures following, to wit:

PIERRE CHOUTEAU, sr.
vs.
WILLIAM ECKERT.

Be it remembered, that on the trial of this cause the plaintiff gave in evidence to the jury—1st, document marked A, in the words and figures following, to wit:

No. 21.—*Peter Chouteau senior's concession.*

To Don Carlos Dehault Delassus, lieutenant colonel attached to the stationary regiment of Louisiana, and lieutenant governor of the upper part of the same province.

Peter Chouteau, lieutenant of militia and commandant of the fort of Carondelet, in the Osage nation, has the honor to represent to you, that formerly he obtained of Don Manuel Perez, lieutenant governor of this part of Illinois, a concession for a tract of land of 10 arpens in front by as many in depth, to be taken on the left side of the Missouri, at about 20 arpens above St. Charles, upon which concession your petitioner has made all preparatory works for the construction of a water grist-mill, which was to be built on the creek comprised in his concession. The lieutenant governor, Don Zenon Trudeau, was pleased to grant to your petitioner an augmentation to the said tract of 30 arpens in depth, all which is proven by the authentic documents necessary to this object. The desire of profiting of the favor which the general government granted to all those who presented their titles to obtain their ratification, caused your petitioner to address those same abovementioned documents to a friend at New Orleans, to whom probably they have not been remitted, since he could not effectuate their presentation; the said original documents having not been registered in the archives of this government, your petitioner would be in great perplexity had he not to offer to you the attestation of Don Carlos Tayon, captain commanding the village of St. Charles, of Missouri, who at that time had a perfect knowledge of the original documents here above mentioned, by virtue of which your petitioner was authorized to begin an establishment for which he has made considerable sacrifice.

Full of confidence in the justice and generosity of the government, he hopes that after the attestation you may be pleased to take from the commandant of St. Charles, you will have the goodness to ratify to him, and in the place, the security of a property which he has been enjoying for more than ten years by virtue of the titles to him expedited by your predecessors, and of which he should wish that you would be pleased to order the surveyor of the Upper Louisiana to put him in possession in the following manner: to take two arpens below the creek comprised in his concession, and above said creek all the space which is between the said creek and the next plantation, by the depth of forty arpens, in order that,

being possessed of the certificate of survey which shall be delivered to him, he may, if needed, have recourse to the superior authorities to obtain the ratification of the said title. The petitioner presumes to hope every thing of your justice in the decision of the case which he has the honor to submit to your tribunal.

PIERRE CHOUTEAU.

St. Louis of Illinois,
17*th of November*, 1800.

St. Louis of Illinois, 18*th November*, 1800.

Cognizance being taken of the foregoing statement, the sub-lieutenant in the royal army and captain of militia, commandant of the post of St. Charles, shall give, in continuation, information of all he knows upon what is here asked.

DELASSUS.

In compliance with the foregoing order, I do inform the lieutenant governor that the statement of Don Pierre Chouteau is in all conformable to truth, having had full knowledge of the titles mentioned by him in his petition, as well as of the considerable works he has done on said land, of which he has always been acknowledged as the proprietor.

CHARLES TAYON.

St. Louis, 25*th November*, 1800.

St. Louis of Illinois, 26 *November*, 1800.

Having seen the foregoing information and the just rights stated by Don Pedro Chouteau, *to* whom an unexpected accident has deprived of his title of concession, and considering that he has been for a long time proprietor of the land in question, the surveyor of this Upper Louisiana, Don Antonio Soulard, shall put him in possession, in the manner solicited, of the tract of land he petitions for; and the survey being executed, he shall draw a plat of said survey, which he shall deliver to the interested party, to serve to the said party to obtain the title in form from the general intendency, to which tribunal alone corresponds, by royal order, the distributing and granting all classes of lands of the royal domain.

CARLOS DEHAULT DELASSUS.

Registered at the desire of the interested, book No. 2, pages 19, 20, and 21. No. 14.

SOULARD.

Truly translated.

JULIUS DE MUN.

St. Louis, *November* 3, 1832.

Evidence with reference to minutes and records.

January 25, 1809.

Board met: Present, the Hon. Clement B. Penrose and Frederick Bates.

Pierre Chouteau, claiming a tract of land situate about twenty arpens above the town of St. Charles, commencing two arpens below Small creek, on the Missouri, from thence up the river to the first land claimed and 40 arpens back, produces to the board a concession for the same from Don Carlos Dehault Delassus, lieutenant governor, dated 26th November, 1800. This tract, including a tract of ten arpens front by ten arpens in depth at the mouth of said creek, formerly granted by Francis Cruzat, lieutenant governor, to Augusta Chouteau, by concession, bearing date 2d April, 1787, and registered in book of registry No. 4, folio 17, which concession is also produced by claimant. Said land granted for the purpose of building a mill within a year and a day, otherwise to be reunited to the domain.

Noel Mongrain, sworn, says: that about twenty years ago claimant commenced the building of a mill dam upon land about 15 arpens above St. Charles; that deponent was himself employed by claimant during part of the summer; that he assisted in hauling large pieces of timber for constructing a mill. Witness recollects that a great deal of clay was hauled for the making of the dam; that in the spring following said dam was swept away by a large flood.

Auguste Chouteau, being present, declares that he gave all his right (to the 100 arpens claimed by concession given to him) to his brother the claimant.

Laid over for decision. See book 3, page 442.

JULY 14, 1810.

Board met. Present: John B. C. Lucas, Clement B. Penrose and Frederick Bates, commissioners.

Peter Chouteau claiming arpens of land. See book No. 3, page 443. It is the opinion of the board that this claim ought not to be confirmed. See book No. 4, page 434.

OCTOBER 9, 1832.

The board met pursuant to adjournment. Present: L. F. Linn, W. Updike, F. R. Conway, commissioners.

Peter Chouteau, sen'r, claiming a tract of land about 20 arpens above the town of St. Charles, (see book No. 3, page 442; No. 4, page 434; Record book B, page 510,) produced a paper purporting to be an original concession from Delassus, dated 26 November, 1800.

Paschel Cerre, duly sworn, says: that the signatures to the above mentioned concession are the signatures of the respective persons they proffer to be. See book No. 6, page 18.

NOVEMBER 2, 1833.

The board met, pursuant to adjournment.

Present: L. F. Linn, A. G. Harrison, F. R. Conway, commissioners.

Peter Chouteau, claiming a special location, situate 20 arpens above St. Charles. See page 18 of this book.

The board are unanimously of opinion that this claim ought to be confirmed to the said Peter Chouteau, sen'r, or to his legal representatives, according to the said concession.

The board adjourned until Monday next, at 9 o'clock, A. M. See book No. 6, page 294.

L. F. LINN,
F. R. CONWAY,
A. G. HARRISON.

RECORDER'S OFFICE, ST. LOUIS, MISSOURI,
21*st November*, 1839.

I certify the foregoing to be truly copied from the printed documents on file in this office.

F. R. CONWAY, *U. S. Recorder of Land titles in the State of Missouri.*

[For plat, see original.]

2nd survey, No. 2982, in the words and figures following, to wit:

Survey No. 2982.

Plat and description of a survey of thirteen hundred and ninety-six acres and thirty hundredths of an acre, equal to sixteen hundred and forty-one arpens and thirty-six perches of land, situated in township forty-six, north of the base line, ranges four and five east, of the fifth principal meridian; executed from the twenty-sixth day of January to the fourth day of February, eighteen hundred and thirty-seven, for Peter Chouteau, sen'r, by L. M. Eiler, deputy surveyor, under instructions of the surveyor of public lands, in the State of Illinois and Missouri, dated the twentieth day of January, eighteen hundred and thirty-seven, issued in virtue of the confirmation of the said Peter Chouteau, senior, or to his legal representatives, by the act of Congress of the fourth of July, eighteen hundred and thirty-six, entitled "An act confirming claims to lands in the State of Missouri, and for other purposes," according to the decision, number twenty-one, of the board of commissioners, under the act of Congress of the ninth of July, eighteen hundred and thirty-two, entitled "An act for the final adjustment of private land claims in Missouri," and the act of the second of March, eighteen hundred and thirty-three, supplemental thereto. This being the land granted to said Peter Chouteau, by Carlos Dehault Delassus, lieutenant governor of the upper part of the province of Louisiana, on the 26th day of November, eighteen hundred, with special positions and limits for the boundaries thereof, without designating the quantity.

Description.—Beginning at a stone, on the northeast corner of the survey, and the left bank of Missouri river, five chains and eighty-three links, (equal to two arpens,) below a bridge over the creek comprised in this survey. Said bridge being on the edge of the old or former bank of the Missouri river, which bears from the stone south twenty-one degrees west, and is built at a point where, according to Joseph Tayon's statement, the creek discharged itself in the Missouri river, at the time when the concession of Peter Chouteau was obtained. Said stone is a lime stone thirteen inches long, nine inches wide, and five inches thick, set seven inches into the ground, the edges facing north seventy-five degrees west, and south seventy-five degrees east, from which a cotton wood, forty-eight inches diameter, bears north sixty-three degrees west, and eighty-four links distant, and a cotton wood fifty inches in diameter, bears south nineteen degrees west, eighty-nine links distant; thence north seventy-five degrees west, on a perpendicular with the front of ten arpens up the river bank, sixty links, enter a field held by Eckert, which field bears along the river bank three chains and forty links to a branch fifteen links wide, runs south five chains to the same branch, running northeast seven chains and sixty links; enter Carter's field, bearing north fifty-five degrees west, and south fifty-five degrees east, seventeen chains and ninety links; leave the said field bearing north fifty-three degrees east, and south fifty-three degrees west, at a road which bears along the same, and enter hills twenty-six chains and eighty-six links, a black oak, seven inches in diameter; thirty-two chains and nine links intersect the line between sections five and six, township forty-six north, range five east, (twenty-one chains and sixty-nine and a half links southward of the quarter section corner on the line between said sections five and six, and eighteen chains and seventy links northward of the corner to sections five, six, seven and eight, township forty-six north, range five east; which corner is included in this survey, and bears north twelve degrees east, five chains and sixty-four links from a point on the creek where preparatory works had been made for the purpose of building a mill dam.)

The aforesaid intersection with the line between sections five and six is at a black oak, ten inches in diameter, corner of fractional sections five and six, township forty-six north, range five east, from which a pin oak, nine inches diameter, bears north seventy-one degrees east, sixty-five links distant; and a black oak, twenty inches diameter, bears south eighty-five degrees west, forty links distant; and a pin oak, ten inches diameter, bears north forty-two degrees west, one hundred and eleven links distant, forty-one chains and forty links; a road bearing southwest and northeast, forty-three chains and fifty links; a road bearing southwest and northeast, fifty-one chains and forty links; a road bearing north and south, fifty-two chains and twenty-eight links; a black oak, three inches diameter, sixty-nine chains and eighty links; a field held by Harris, bears north thirteen degrees west, and south thirteen degrees east,

eighty chains and forty links; leave the field bearing north seventy-four degrees east, and south seventy-four degrees west, eighty-seven chains and ninety links; a black jack, sixteen inches diameter, ninety-five chains and thirty-five links; a black oak, thirty-six inches diameter, ninety-nine chains and fifty links; a branch, four links wide, running south one hundred and three chains and seventy links; enter a field bearing north twenty degrees east, and south twenty degrees west, one hundred and thirteen chains and seventy-eight links; leave the field bearing north thirty degrees east, and south thirty degrees west, one hundred and fifteen chains and forty-one links; intersect the line between section one, township forty-six north, range four east, and section six, township forty-six north, range five east, (thirty-eight chains and seventy links southward of the township corner,) where is a stone corner of fractional sections one, township forty-six north, range four east, and six, township forty-six north, range five east; said stone being a lime stone, eleven inches long, ten inches wide, and six inches thick, set six inches into the ground, the edges thereof facing north and south, from which a black oak, eight inches diameter, bears north eight degrees west, forty-one links distant; and a white oak, eighteen inches diameter, bears north eighty-four degrees east, eighty-two links, distant one hundred and fifteen chains and fifty-six links; a black oak, seven inches diameter, one hundred and sixteen chains and sixty-six links, (equal to forty arpens,) a stone, the northwest corner of this survey; said stone being a lime stone thirteen inches long, eleven inches wide, and seven inches thick, set eight inches in the ground, the edge facing south fifteen degrees west, and north fifteen degrees east, from which a hickory, five inches diameter, bears south forty-six degrees east, seventy-seven links distant; and a black oak, four inches diameter, bears north thirteen degrees west, fifty-nine links distant; thence south fifteen degrees west, seventy-five links; enter a field, bears north seventy degrees west, and south seventy degrees east, eight chains and sixteen links; leave the field, bearing north sixty degrees west, and south sixty degrees east, eleven chains and seventy-five links, to a branch four links wide, runs south fifteen chains and twenty links; enter a field bears north thirty-two degrees west, and south thirty-two degrees east, held by Tager, thirty-one chains and ninety-four links; leave the field bearing north fifty-two degrees west, and south fifty-two degrees east, forty chains and thirty-eight links; a road bearing southwest and north, forty-four chains, intersect the line between sections one and twelve, township forty-six north, range four east, (twenty-two chains and twenty-two links eastward of the corner to said sections one and twelve, on the easterly boundary line of survey number one hundred and sixty-five, in the name of George R. Spencer, under Michael Rybolt, for four hundred and fifty arpens, at post at said intersection, for corner to fractional sections one and twelve, township forty-one north, range four east, from which a black oak, twenty inches diameter, bears north thirty-

two degrees west, twenty-four links distant; and a black oak, ten inches diameter, bears south forty-seven degrees west, distant sixty-four links; fifty-two chains and thirty links, enter a field, bears north eighty degrees west, and south eighty degrees east; sixty-six chains and seventy links, leave the field, bears north sixty-two degrees west, and south sixty-two degrees east; seventy-four chains and fifty links, to a point from which a corner of Rybolt's surveys, easterly boundary and corner of fractional section twelve, bears south eighty-four degrees west, two hundred and thirty-five links distant; seventy-six chains and seventy links, a branch, four links wide, runs south ninety chains and seventy-one links; a hickory, nine inches diameter, ninety-five chains and fifty-two links; a branch, six links wide, runs southeast ninety-six chains and eighty-one links, intersects the easterly boundary line of survey number one hundred and sixty-five, in the name of George R. Spencer, under Michael Rybolt, (fifteen chains and eighty-one links, south thirty-three degrees thirty minutes east of a corner of his survey;) at said intersection, a stone corner of this survey, and corner to fractional section twelve, township forty-six north, range four east; said stone being a lime stone, eighteen inches long, eleven inches wide and six inches thick, set ten inches into the ground, the edges facing north fifteen degrees east, and south fifteen degrees west; from which a black oak, sixteen inches diameter, bears south eighty degrees east, ninety-seven links distant; and a white oak, eleven inches diameter, bears north twenty-seven degrees west, sixty-three links distant; thence south thirty-three and a half degrees east, with the eastern boundary line of survey number one hundred and sixty-five, one chain and fifty-three links, to a branch, six links wide, runs southeast twenty-seven chains, to the northwest corner of Bouche's field, the field bears north fifty-two degrees east; and along the line, thirty-seven chains and sixty-five links, a stone, corner of survey number one hundred and sixty-five, and corner of this survey; said stone being a sand stone fourteen inches long, seven inches wide, and four inches thick, set ten inches in the ground, the edges facing northwest and southeast; from which stone a black oak, twenty-six inches in diameter, with three notches of old , facing towards the stone, bears south thirty-two degrees east, one hundred and ten links distant; thence south forty-two degrees fifteen minutes east, with another boundary line of survey, number one hundred and sixty-five, thirteen chains and sixty-five links, enter bottom at the end of Bouche's field, sixteen chains and sixty-seven links, a corner of survey one hundred and sixty-five; said corner being a post from which an elm, ten inches diameter, bears north sixty degrees west, forty-four links distant, and a sycamore, marked at the time of this survey with a blaze, and a notch below, being ten inches in diameter, bears north eighty-two degrees east, distant twenty-five links; thence south two degrees and thirty minutes east, with a boundary line of survey, number one hundred and sixty-five, twenty-three chains and

forty-five links, a cotton wood thirty-six inches diameter, on the left bank of the Missouri river, marked, of old, with a large blaze, facing with the course of the river up stream, a blaze facing with the course of the river down stream, and one blaze facing north two and a half degrees west, from which a cotton wood, (as marked, at the time of this survey, with one blaze and one notch below,) *a cotton wood*, thirty-six diameter, bears north fifty degrees east, one hundred and twenty-six links distant, and an elm fourteen inches diameter bears north fifty-two degrees west, seventy-eight links distant; thence, with the meanders of Missouri river, down stream, north eighty degrees east, twenty-two chains; thence north eighty-five degrees east, thirty chains; thence north fifty-eight degrees east, twenty-three chains and fifty links; (at fifteen chains, a point opposite on the head of an island;) thence north thirty degrees west, fifteen chains; thence north forty-six degrees west, fifteen chains; thence north two degrees west, fourteen chains; thence north thirty-seven degrees east, thirteen chains; thence north sixty-seven degrees east, nine chains; thence south eighty-seven degrees east, fifteen chains; thence north twenty-two degrees east, thirty-four chains and thirty-four links; thence north twenty-four degrees east, nineteen chains; (at eight chains and six links enter low and new-made bank;) thence north fifteen degrees east, eight chains; (at two chains and forty-seven links intersect the line between sections five and eight, township forty-six north, range five east;) at said intersection a post, from which a cotton wood, sixteen inches diameter—the bark thereof is taken away all around below—bears south six degrees east, distant twelve links; thence north twenty-two degrees west, three chains and seventy links, to the branch which here discharges itself from the low bottom in the river, four chains and eighty links, to the point of beginning of the survey.

The whole of the land included in this survey lies within the bounds of the tract claimed as commons by the inhabitants of the town of St. Charles, under the act of Congress of the thirteenth of June, eighteen hundred and twelve, entitled "An act making further provision for settling the claims to land in the Territory of Missouri."

SURVEYOR GENERAL'S OFFICE,
St. Louis, 5th September, 1839.

The foregoing plat and description of survey, numbered two thousand nine hundred and eighty-two, are correctly copied from pages one hundred and fifty-nine, one hundred and sixty, one hundred and sixty-one, and one hundred and sixty-two, of record book C, in this office.

WILLIAM MILBURN, *Surveyor General.*

And it was then admitted by the defendant, that he was, at the commencement of this suit, in possession of a part of the identical land described in the plaintiff's declaration, and included in survey No. 2982, given in evidence.

The defendant then gave in evidence document C, certified from the office of the recorder of land titles, of which the following is the translation:

To the recorder of land titles for the district of Louisiana:

The inhabitants of the village of St. Charles, in the Territory of Louisiana, claim 14,000 arpens of land, situate in and near the said village, conceded to the inhabitants of said village for the purpose of a common, and for wood land, for their use, by Don Zenon Trudeau, late lieutenant governor of Upper Louisiana, January 23d, 1797; and by Charles Dehault Delassus, ci-devant lieutenant-governor of Upper Louisiana, February 26, 1801, and of the 23d February, 1804.

The documents from A to E are—

No. 1 A, hereunto annexed, signed Edward Hempstead.

To Don Zenon Trudeau, lieutenant-governor of the western part of Illinois, at St. Louis:

Charles Tayon, sub-lieutenant of infantry, pensioned by the king, captain of militia, commandant, under your orders, of the village of St. Charles, of Missouri, has the honor to pray you to grant him a tract of timbered land of six arpens in width, fronting on the (marcies croche de la prairie basse) Crooked swamp, in the low prairie, and extending to the Missouri, adjoining, on one side, to Mr. Ant. Janis, and on the other side, to lands not heretofore granted; favor which he expects of your justice. St. Louis, 11th January, 1797.

(Signed) CHARLES TAYON.

St. Louis, *January* 23, 1797.

Having been informed that the land asked for, in order to procure timber, is in no way fit to be improved, on account of the inundations to which it is subject every year, and that the timber thereon is only good to burn, and will renew itself in a short time, and therefore cannot be ruined, as the timber growing on the hills, which experience has shown will never grow up again; and the said land being in the vicinity of the village of St. Charles and of various farms, in the prairie of its dependency, which would have to go a great deal further to procure wood; said tract shall remain (as well as all others adjoining, either in ascending or descending the Missouri, and which have been asked for by sundry petitions, addressed to us, together with the present, by Mr. Tayon) to the royal domain, and for the common use of the said village of St. Charles, and for the lands already granted in the prairies, or to be granted hereafter: all which Mr. Tayon shall make known to all the inhabitants, and especially to those who have asked for land, and whose petitions I herewith return.

(Signed) ZENON TRUDEAU.

No. 2.—B.

In the year eighteen hundred and one, on the 18th of January, at the request of Mr. Louis Barrada, *sindic* for the fences of this

parish, we, Charles Tayon, captain commandant of the said St. Charles, have given notice at the door of this said church, that all the inhabitants of this place should have to assemble this day in our government (house), in order to determine whether the commons at the lower end should be increased or not. The said inhabitants being then assembled, and the question being under deliberation, they all unanimously agreed, that for the interest of the said parish, the enclosed of the lands shall begin (acoté) by the side of Mr. Antoine Lamarche, and it shall be continued in descending to the Crooked swamp, all the way through the woods, to nearly opposite the house of the late Louis Hunault; thence it shall run in a straight line to the Missouri.

The said inhabitants having thus determined on this head, it was agreed that the sindic on duty this year shall cause to be measured the quantity of arpens of land which are included in the new augmentation of the commons, in order to (separter) distribute to each inhabitant what he is to do with it, according to the usages which have always been observed, without wronging any one whosoever in the said distribution.

It has been further agreed in the said assembly, that if hereafter the commons of the upper end should need to be enlarged, in order to procure more pasturage for the cattle, all the said inhabitants (s'y porterons) shall help in doing the same, as this day they bind themselves to do for the lower end, always without prejudice to any one whosoever. And as the said inhabitants will not undertake any thing without the consent of the lieutenant governor, they have judged proper that the present deliberation should be communicated to him, and that he be supplicated to preserve to the said inhabitants of St. Charles, of Missouri, their upper and lower commons, in their whole and entire state, and they will bind themselves to enclose the same as they have done heretofore, in order to preserve their grain and other property.

Done and agreed upon in our government (house), day and year as above. And all the said inhabitants have signed or made their customary marks.

Bazile + Proux,	Jean + Vallet,
J. Bte. H. Lacroix,	Antonie + Lamarche,
Pierre Troge,	J. Bte. + Petit,
Pr. + Palardi,	Joseph + Voizard,
Antonie + Gantier,	Barthelmy + Contremanche,
Louis + Barrada,	J. Bte. + Laurin,
Joseph + Beauchamp,	Rene + Dodier,
Joseph + Tayon,	Joseph + Laurin,
Nicholas + Faye,	Isidore + Savoye,
Touissainte Cerré,	Charles + Vallet,
J. Marie + Bissonette,	J. Bte. + Sauvage.
Jacques + Marechal,	

(Signed) PRIEUR,
CHARLES TAYON.

St. Louis of Illinois, *February* 26, 1801.

All concessions and augmentations of property must be granted by the intendant of these provinces, on a petition which is to be presented by those persons claiming lands; but if the commons of the inhabitants of St. Charles is not sufficient for their cultivation, we do permit them, provisionally, to enlarge the same according to their wishes, without ensuring to them the right of property, which they are to apply for as above mentioned. And the provisional lines of the said augmentation shall be drawn by Captain Antoine Soulard, surveyor of Upper Louisiana, who is the only person authorized to survey under our orders. It being well understood that nothing shall be done to the prejudice of any person.

(Signed) CARLOS DEHAULT DELASSUS.

C.—In consequence of the representation of the inhabitants of your post, which appears to me very just and well founded, after my decree of 26th February, in the year 1801, by which the augmentation therein mentioned is granted to them, and for which they have asked a survey by their petition of 27th April of the same year—which petition you have kept to this day without making it known to me, for which I hold you responsible—I apprize you that the surveys made in the said place cannot belong to any individual, but to the commons of St. Charles. Therefore you shall notify those who have had surveys made in the said place of this disposition, and you shall take the necessary measures for the execution of the whole survey asked for by the said petition of 27th April, according to the aforesaid decree of 26th February, in the year 1801.

May God have you in His holy keeping.

Signed in the original,

CARLOS DEHAULT DELASSUS.

Mr. Charles Tayon.

St. Louis of Illinois, 23*d Feb'y*, 1804.

I certify that the above is a copy of the original, (official letter,) addressed to Mr. Charles Tayon by the ex-commander-in-chief of Upper Louisiana, Don Carlos Dehault Delassus, and presented to me by the citizens of note of the village of St. Charles, while I was commandant of the said village.

(Signed) JAMES MACKAY.

E.—To the honorable commissioners of the board on land claims for the district of Louisiana.

Gentlemen: The undersigned, representatives of the people of St. Charles, in laying before you the title papers of their commons, have the honor to make the following observations: It has always been the intention of the former government, to give to each new settlement a common in proportion to its population, in order that the inhabitants might find the means to procure wood for their own

use, and a space sufficiently large for the grazing of their cattle. By a decree of Mr. Zenon Trudeau, under date of 25th Jan'y, 1797, it appears that he had reserved for the village of St. Charles, (une pointe de terre) a tract of land to serve as a common, believing the same to be sufficient for them.

By a deliberation of the inhabitants of the said St. Charles, taken on the 18th January, 1801, and addressed to Mr. Delassus, in which they asked for an enlargement of their common, it resulted that it was granted to them under the conditions specified in his decree. Finally, by a petition of the said inhabitants to Mr. Charles Tayon, then commandant of said post, under date of the 27th April, 1801, they asked that their commons be surveyed, and their petition laid before the lieutenant governor.

By the above statement, you see, gentlemen, that the Spanish government had really granted a common to the said inhabitants of St. Charles; that, if their titles are not vested with all the formalities required by the law of Congress, it is owing first, to the last petition made on this subject having been kept back by the said Chas. Tayon during several years; and secondly, on account of the inhabitants, being so little versed in business matters, having neglected to take the necessary measures to secure the gift made to their village. After their statement the undersigned will observe to you, gentlemen, that if their common is not preserved, such as it has been granted, the greatest injury will result to the inhabitants of St. Charles, who, not being able any more to find the wood necessary for their use and the pasturage for their cattle, shall be obliged to abandon a village which they have themselves established, and where they have been exposed to so much danger on account of the Indian nations.

Therefore, the said undersigned, as well in their names as in the names of all the inhabitants of St. Charles, whom they represent, supplicate you, gentlemen, to have some indulgence for them in the examination which you will make of their titles for their common; and, in case your powers should not allow you to approve them, that you would make a representation to Congress in their favor, which may enable them to obtain the confirmation of the said titles. This is the favor which they hope to obtain of your kindness; and they assure you, gentlemen, that they will have a lasting gratitude for your condescension in contributing to the welfare of their village.

Signed, PIERRE TROGE,
FRANCIS DUGUETTE,
J. BTE. H. LACROIX,
ANTOINE ✕ GAUTHIER RAYNAL, Sr.
LOUIS ✕ BARRADA.

St. Charles, 3*d February*, 1806.

Signed, PRIEUR.

RECORDER'S OFFICE, ST. LOUIS, *Feb.* 6, 1837.

I certify the above and foregoing to be truly translated from book C, pages 484, 486, and 487, of record in this office.

JULIUS DE MUN.

He also gave in evidence plat and certificate of survey, certified from the office of the recorder of land titles, of which the following is a translation:

I, Anthony Soulard, surveyor general of Upper Louisiana, do hereby certify, that a tract of land was surveyed, meted and bounded for, and in presence of, the syndic and inhabitants of St. Charles, (Missouri,) with the assistance of many of the inhabitants of said village, such as is represented in the plan hereto annexed, according to their petition therefore, dated January 18th, 1801, and the decree of the lieutenant governor, by which I am ordered to put them in possession of a sufficient quantity of land to serve them as a common; which surveys being completed, I find the said tract of land to contain 14,000 arpens, (superficial measure,) the admeasurement being made with the perch of Paris, of 18 pies in length, also Paris measure, according to the usages or customs of this country; which tract of land is situate on the left side of the Missouri river, at about 21 miles from the town of St. Louis, bounded as follows, viz: N. E., lands of the royal domain; S. E., the river Missouri; S. W., partly by land of St. James D'Eglise; N. W., by sundries, namely, Francis Duquette, the inhabitants of Marias Croche, lands at the Mamelles, lands of various proprietors, and lastly, by lands of Frs. Duguette, Joseph Tayon, John Tayon, and royal domain. This survey and admeasurement made without noticing the variation magnetic needle, which is (now) 7° 30′ E.; the whole as represented in the plan hereto prefixed, in which the courses, distances, metes, bounds, &c., are noted.

This survey made in conformity to the decree of the late lieutenant governor, Ch. D. Delassus, dated February 26, 1801, which is hereto annexed, the whole laid down from the field notes of my deputy, James Mackay, dated on the 27th (day following) of the month of February, of this present year, which I signed.

ANTHONY SOULARD.

ST. LOUIS, *March 2d*, 1804.

Notes.—All the metes and corners are designated in the plan. All the trees in the lines are blazed, with two notches below the blaze. The trees on the right and left of the lines are merely blazed. A is a tract of land subdivided among several persons, and called the Cul de Sac lands. C is a tract also granted to several persons, and called the Grand Prairie.

I, Anthony Soulard, surveyor general of Upper Louisiana, do hereby certify, that the above plan and notes of a survey agree in every part with the originals, which are filed in my office.

ANTHONY SOULARD, *Surv. Gen.*

ST. LOUIS OF ILLINOIS, *March 2d*, 1804.

STATE OF MISSOURI, *county of St. Charles, ss:*

This day personally appeared in open court, in the circuit court of St. Charles county, Rene Paul, who, being duly sworn, upon his oath states, that the foregoing is a true translation of the certificate of survey, and of the notes and remarks of Anthony Soulard, surveyor general, made from the certified copy from the office of the recorder of land titles.

R. PAUL.

Sworn to and subscribed, in open court, May 13, 1840.

LUDWELL E. POWELL, *Clk.*

He then proved, by Judge Spencer, that he (witness) came to St. Louis in the winter of 1776; that he came to St. Charles in the winter of 1798; when he came to St. Charles, the town was surrounded by a fence. The witness, looking on the plat of the survey of the commons, said that the claim of Spencer under Rybolt was granted to conform to the fence of the commons, and to have the fence of the commons as its northern line; and, looking upon the plat of survey given in evidence by the plaintiff, says the whole of the land covered by the plaintiff's claim, as laid down on that plat, was included in the commons fence, which was standing when he came here, and remained until after 1804.

Mr. Cunningham, another witness of the defendant, said that he was a deputy surveyor of the U. S., and, as such, he has surveyed the exterior lines of the commons of the town of St. Charles; that, in making such survey, he in some places found the lines of the Spanish survey, in others the timber was cut down, and, in prairie land, no lines of courses could be found; and that the Spanish survey conformed to the plat given in evidence in this cause.

This being all the evidence, the court, on motion of the defendant, instructed the jury, that, "if they believed, from the evidence, that the premises in controversy are included in the tract of land surveyed under the authority of the Spanish lieutenant governor of Upper Louisiana, for the commons of the town of St. Charles, and held by the inhabitants of said town, and enclosed by them as their commons, under the Spanish government, the plaintiff cannot recover in this action;" to which instruction the plaintiff, by his counsel, excepts, and prays the court to sign this his bill of exceptions, which is done, and the same is made part of the record.

Both plaintiff and defendant gave in evidence sundry acts of Congress, and defendant gave in evidence a private act of the legislature of the State of Missouri, which they agree shall not be set out in the bill of exceptions, but may be read, and considered evidence in the Supreme Court, as if here inserted.

EZRA HUNT.

STATE OF MISSOURI, *county of St. Charles.*

I, Ludwell E. Powell, clerk of the circuit court of St. Charles county, certify the above and foregoing to be a full and tran-

script of the record of the judgment of the circuit court of St. Charles county, in the case of Pierre Chouteau, senr., *vs.* William Eckert, defendant, together with all things touching the same, as the same remain of record in my office.

In witness whereof, I have hereunto set my hand, and affixed the [L. S.] seal of said court, at office, this nineteenth day of January, eighteen hundred and forty-one.

LUDWELL E. POWELL, *Clk.*

And afterwards, to wit, at a supreme court for the State of Missouri, begun and held at the city of St. Louis, within and for the third judicial district of said State, on the third Tuesday of May, being the eighteenth day of said month, in the year of our Lord one thousand eight hundred and forty-one, the following proceedings appear of record in said cause, to wit:

PETER CHOUTEAU vs. WILLIAM ECKHERT. } Error to St. Charles circuit court.

Now, at this day, come the parties aforesaid, by their respective attorneys, and the court having heard the arguments of counsel on each side, and not *be* sufficiently advised what judgment to render, take time to consider thereof.

And afterwards, to wit, on Saturday, the 29th day of May, 1841, at the court and place aforesaid, the following further proceedings were had in said cause, to wit:

PETER CHOUTEAU vs. WILLIAM ECKHERT. } Error to St. Charles circuit court.

Now, at this day, come again the parties aforesaid, by their respective attorneys, and the court here being now sufficiently advised of and concerning the premises, do consider and adjudge, that the judgment aforesaid, in form aforesaid, by the said circuit court rendered, be in all things affirmed, and stand in full force, and that the said defendant in error recover of the said plaintiff in error his costs and charges in this behalf expended, and have thereof execution.

The opinion of the court in said cause was filed on the day and year last aforesaid, and is as follows:

PIERRE CHOUTEAU vs. WILLIAM ECKHERT. } Appeal from St. Charles C. C.

This was an action of ejectment, to recover a tract of land lying near the town of St. Charles. The judgment of the circuit court was for the defendant.

The title of the plaintiff was as follows:

1. A concession from the lieutenant governor, Delassus, dated 26th November, 1801, founded on a former grant alledged by Chouteau to have been made by Cruzat, in 1787.

2. The proceedings of the board of commissioners, under the act of 1832 and '3, by whom said claim was confirmed. And

3. The act of 4 July, 1836, and a survey by the United States under said act.

This claim had been rejected by the commissioners, in 1810.

The defendant claimed under the inhabitants of the town of St. Charles. The claim to the commons of St. Charles, so far as it depends on documentary evidence, is the same as that contained in the statement of the case of Bird *vs.* Montgomery (6 mo. R. p. 510). The oral testimony of a witness was also taken, the substance of which was, that witness came to St. Louis in the winter of 1796, and to St. Charles in the winter of 1798. When he came to St. Charles the town was surrounded by a fence. The witness, looking on the plat of the survey of the commons, said that the claim of Spencer, under Rybolt, was granted to conform to the fence of the commons, and to have the fence of the commons as its northern line; and, looking upon the plat of survey given in evidence by the plaintiff, says the whole of the land claimed by the plaintiff's claim, as laid down on that plat, was included in the commons fence, which was standing when he came here, and remained until after 1804.

After the evidence had been submitted, the court instructed the jury, that, "if they believed, from the evidence, that the premises in controversy were included in the tract land surveyed under the authority of the Spanish government, for the commons of the town of Saint Charles, and held by the inhabitants of said town, and enclosed by them as their commons under the Spanish government, the plaintiff cannot recover in this action."

There seem to be no questions arising in this case, which were not involved in the case of Byrd *vs.* Montgomery (6 mo., R. 510). The oral testimony given in this case, of the actual enclosure of these commons in 1798, and its continuance until after the change of governments in 1804, may give some additional force to the title of the commons as against this plaintiff. The confirmation, by the act of 4th July, 1836, cannot prevail over the previous confirmation in 1812.

Judgment affirmed. W. B. NAPTON.

I concur. G. TOMPKINS.

STATE OF MISSOURI, *to wit:*

I, Hampton L. Boon, clerk of the supreme court of the State of Missouri, do hereby certify, that the accompanying and foregoing forty pages of manuscript contain a full and complete transcript of the record and proceedings of the supreme court of the State aforesaid, in the case of Pierre Chouteau, plaintiff in error, against William Eckert, defendant in error, as the same now remains in my office.

Given under my hand and private seal, having no seal of office provided, at the city of Jefferson, the twenty-seventh [SEAL.] day of October, in the year of our Lord one thousand eight hundred and forty-three.

HAMPTON L. BOON.

PETER CHOUTEAU, sen'r, vs. WILLIAM ECKHERT. } In error to the supreme court of Missouri.

SUPREME COURT OF UNITED STATES.

And now at this day comes the said Peter Chouteau, sen'r, by his attorneys, and says, that in the record and proceedings there is manifest error in this, to wit, that, by the record aforesaid, it appears that the judgment, in form as aforesaid, was given for the said William Eckhert, when, by the law of the land of these United States, the said judgment ought to have been given for the said Peter Chouteau, against the said William Eckhert.

There is error also in this, that the said judgment and decision of said supreme court of the State of Missouri is against the title and right of said plaintiff in error, specially set up by him to the land in said declaration in ejectment described, under the treaty of cession of Louisiana to the United States, of the 30th April, 1803, and also under the acts of Congress made in favor of French and Spanish land claimants in Missouri and Arkansas, and particularly under the acts of Congress of the 9th July, 1832, and 2d March, 1833, and the act of Congress of the 4th July, 1836, whereas said judgment and decision ought to have been in favor and support of said right and title, so set up by said plaintiff, to said land under said treaty, and said acts of Congress respectively, as same appears by the record aforesaid; and said Peter Chouteau prays that the judgment and decision aforesaid may be reversed annulled and held entirely void; and that said Peter Chouteau, sen'r, be restored to all things which he *he* hath lost by reason of the judgment and decision aforesaid.

LEWIS V. BOGY & L. E. LAWLESS,
Att'ys for Plff. in Error.

MISSOURI DISTRICT, *sct:*

The President of the United States to the honorable the [L. S.] judges of the supreme court of the State of Missouri, greeting:

Because, in the record and proceedings, and also in the rendition of a judgment in the said supreme court, between *between* Pierre Chouteau, senior, plaintiff, and William Eckhert, defendant, wherein the said supreme court decided against a right and title derived by said Pierre Chouteau under a treaty, a manifest error hath happened, to the great damage of the said plaintiff as aforesaid, as by

his complaint appears; we being willing that error, if any, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, so that you have the same, together with this writ, before the chief justice and associate justices of said Supreme Court, on the second Monday of January next, at the city of Washington, the present seat of the National Government, that the records and proceedings aforesaid, being duly inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness, the honorable Roger B. Taney, chief justice of the said Supreme Court, the tenth day of April, in the year of our Lord one thousand eight hundred and forty-three.

Issued at office, in the city of St. Louis, under the circuit court of the United States for the Missouri district, the day and year last aforesaid.

JOSEPH GAMBLE,
Clerk U. S. C. C. Missouri district.

STATE OF MISSOURI, *to wit:*

In obedience to this writ, I send to the Supreme Court of the United States the accompanying transcript of the record and proceedings of the within entitled cause, as fully as the same remains on file in my office.

Given under my hand and private seal, having no seal of
[L. S.] office provided, at the city of Jefferson, the 27th day of October, 1843.

HAMPTON L. BOON,
Clerk Sup. Court Mo.

MISSOURI DISTRICT, *set:*

The President of the United States to William Eckhert, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at the city of Washington, on the second Monday of January next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State Missouri, at the city of Jefferson, wherein Pierre Chouteau, sen'r, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why judgment rendered against the said Pierre Chouteau should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the honorable John Catron, one of the justices of the said Supreme Court of the United States, the 13th day of April, in the year of our Lord thousand eight hundred and forty-three.

J. CATRON,
An Ass. Jus. S. C. U. S.

Executed the above citation on the above William Eckhart, by delivering to him a true copy of the above, and also of the accompanying writ of error, at Fulton, Callany county, district of Missouri, on the 19th of June, *of June*, 1843.

WM. H. RUSSIN,
Marshal of the District of Mo.

Filed,